Petition

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IN THE SUPREME COURT OF THE UNITED STATES

CHARLES GILMORE,
Petitioner

VS.

COMMONWEALTH OF PENNSYLVANIA,
Respondent

On Petition For a Writ of Certiorari To The Supreme Court of Pennsylvania

---

PETITION FOR A WRIT OF CERTIORARI

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APPENDIX "A" (Opinion of Supreme Court of Penna.)

QUESTIONS PRESENTED

I. DID THE SUPREME COURT OF PENNSYLVANIA DENY CONSTITUTIONAL RELIEF TO WHICH PETITIONER WAS ENTITLED BY REFUSING TO APPLY THE RULE OF PAYTON VS. NEW YORK, 445 U.S. 5 73 (1980) TO AN ARREST WHICH OCCURRED ON JULY 13, 1978 ?

II. WERE THE FOURTH AMENDMENT RIGHTS OF THE APPELLANT VIOLATED BY THE WARRANTLESS ARREST OF THE APPELLANT AT HIS RESIDENCE, WHICH RESULTED IN A CONFESSION TO THE CHARGE OF MURDER ?

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES GILMORE,
Petitioner

VS.

COMMONWEALTH OF PENNSYLVANIA,
Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF PENNSYLVANIA

CHARLES GILMORE, the Petitioner above named, respectfully prays that this Court issue a Writ of Certiorari to review the decision of the Supreme Court of Pennsylvania entered in this case on December 17, 1981.

The Opinion of Supreme Court of Pennsylvania dated December 17, 1981, is not yet reported. A copy of that Opinion is attached hereto as Appendix "A".

JURISDICTION

The Judgment of the Supreme Court of Pennsylvania was entered on December 17, 1981. This Court has proper jurisdiction under 28 United States Code §1254.

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitutional Provision involved in this case is the Fourth Amendment of the United States Constitution, which provides as follows:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but by probable cause, supported by oath, oraffirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

Petitioner in this matter is Charles Gilmore, an individual who resided in Philadelphia, Pennsylvania on July 13, 1978. On that date, he was arrested at his home by officers of the Philadelphia Police Department with regard to an investigation of a charge of Homicide which was alleged to have occurred on July 18, 1973, in Philadelphia. Subsequent to this arrest, the Defendant was interrogated at Police Headquarters and made a confession to the charges.

It was this confession which was the basis of the conviction of the Defendant at his non-jury trial.

Prior to the trial, the Petitioner moved to suppress the aforesaid confession. His pre-trial Motion raised several grounds, including the absence of a warrant in the arrest process.

In his Appeal to the Supreme Court of Pennsylvania, the Petitioner argued that the lower Court had erred in denying the Pre-trial Motion to Suppress this confession. In support of that argument, the Petitioner contended before the Pennsylvania Supreme Court that the warrantless arrest at his residence required the suppression of the confession pursuant to Payton vs. New York, 445 U.S. 573 (1980). The Commonwealth, in its reply, cited the Pennsylvania Supreme Court decision of Commonwealth vs. Miller.

417 A.2d. 128 (Pa. 1980), which held that the decision of the Pennsylvania Supreme Court which had held that an arrest at the residence of a Defendant is unlawful absent a warrant (absent exigent circumstances), Commonwealth vs. Kevin Williams, 396 A.2d. 1177 (Pa. 1978), would be applied prospectively only. In its Opinion the Supreme Court of Pennsylvania dispensed with this contention without discussion. However, Mr. Justice Roberts dissented for the reasons set forth in his dissenting Opinion in Commonwealth vs. Miller, supra.

The present posture of this case is that the Petitioner's direct Appeals through the State system have been exhausted and his sentence (life imprisonment plus a concurrent term of ten to twenty years on a Robbery charge) stands unless this Court takes contrary action.

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD APPLY PAYTON VS. NEW YORK TO AN ARREST WHICH OCCURRED ON JULY 13, 1978, NOTWITHSTANDING THE DECISION OF THE PENNSYLVANIA SUPREME COURT TO APPLY ITS OWN RULE REGARDING WARRANTLESS ARRESTS AT THE RESIDENCE OF AN ACCUSED IN A PROSPECTIVE MANNER ONLY

In his Appeal to the Supreme Court of Pennsylvania, the Petitioner contended that the statement which supported his conviction in the trial Court should have been suppressed because Petitioner was arrested at his residence on July 13, 1978, without a warrant and without exigent circumstances to justify the warrantless manner in which he was arrested. Although the suppression Court Judge found as a fact that the Petitioner had in fact been arrested at his residence by members of the Philadelphia Police Department, the lower Courts held that the Petitioner's rights under the Fourth Amendment had not been violated. The Supreme Court of Pennsylvania affirmed the denial of a Suppression Motion in this case without discussion; see Appendix "A".

The Petitioner was interrogated following his arrest at Police Headquarters. He initially denied knowledge of the killing; however, after having been confronted by the Police interrogators with an alleged inculpatory statement of a co-Defendant, the Petitioner confessed, approximately four hours and forty minutes after having been removed from his home. Brown vs. Illinois, 422 U.S. 590 (1975).

The Commonwealth does not contend that there were exigent circumstances which would have justified this warrantless arrest. Rather, their argument is that the decision of the Pennsylvania Supreme Court in Commonwealth vs. Miller, 417 A.2d. 128 (Pa.1980) forecloses any relief. In Miller, the Pennsylvania Supreme Court

held that its decision in Commonwealth vs. Kevin Williams, 396 A.2d. 1177 (Pa. 1978), would be applied only in a prospective manner. In Commonwealth vs. Williams, supra, the Supreme Court of Pennsylvania held , as this Court subsequently did in Payton vs. New York, 445 U.S. 573 (1980), that, absent exigent circumstances, an arrest warrant is required to arrest a Defendant at his residence.

In his Appeal to the Supreme Court, the Petitioner herein argued that the Petitioner should receive the benefit of this Court's decision in Payton vs. New York, supra, regardless of the decision of the Supreme Court of Pennsylvania in Commonwealth vs. Miller, supra. Mr. Justice Roberts of the Pennsylvania Supreme Court dissented from the action of the Pennsylvania Supreme Court in this case for the reasons set forth in his dissenting Opinion in Commonwealth vs. Miller, supra.

Since the decision of the Pennsylvania Supreme Court in Commonwealth vs. Williams, supra, was announced on November 18, 1978, and since the arrest in this case occurred at a prior time, (July 13, 1978), the Pennsylvania Supreme Court held that the arrest in this case was not controlled by the principle announced in Commonwealth vs. Williams, supra. As Justice Roberts noted however, the decision of this Court in Payton vs. New York, supra,was to vacate and remand other cases then pending before that Court for reconsideration in light of the Payton decision. See Bush vs. Florida, 100 S.Ct. 1826 (1980), Gordon vs. New York, 100 S.Ct. 1827 (1980), Gayle vs. New York, 100 S.Ct. 1829 (1980), and Duragan vs. Illinois, 100 S.Ct. 1829 (1980). The Petitioner submits that these announcements reflected a clear decision on the part of this

Court to apply Payton to all cases pending at the time of the decision. Since this case was in a pending status at the time of the Payton decision, it also should be controlled by Payton without regard to the decision of the Pennsylvania Supreme Court in Commonwealth vs. Miller, supra.

While the United States Supreme Court has yet to rule on whether or not Payton vs. New York will be applied retroactively, this issue is now pending before the Court pursuant to the granting of a Petition for Writ of Certiorari in United States vs. Johnson, reported at 30 Criminal Law Reporter 4001 (October 5, 1981). Furthermore, the Supreme Court of Pennsylvania should not be permitted to dilute the Constitutional expectations of persons situated such as Mr. Gilmore. The Pennsylvania Supreme Court has a duty to apply Federal Constitutional law in accordance with this Court's decisions, regardless as to whether or not the State Constitution provides a more narrow reading of the same rights. The decision of the Pennsylvania Supreme Court in Commonwealth vs. Kevin Williams was not based upon the Pennsylvania Constitution; rather,the decision was solely and exclusively based upon the Fourth Amendment to the United States Constitution. Had the decision been based upon the State Constitution, it would have been immunized from review by this Court. Payton vs. New York, supra , at Footnote 52. Accordingly, the subsequent decision of this Court in Payton is controlling instantly and the Pennsylvania Supreme Court should not be permitted to curtail or otherwise limit the reach or extent of the Federal Constitutional right involved herein. See "State Constitutions and The Protection of Individual Rights" , authored by Mr. Justice Brennan,

90 Harvard Law Review 489 (1977); Oregon vs. Hass, 420 U.S. 714, 719 (1974). In Oregon vs. Hass, this Court stated that a State is not free to impose a more strict reading of a Federal Constitutional principle where the United States Supreme Court has specifically refrained from so imposing such a reading. In effect, this result is mandated by the Supremacy Clause of the United States Constitution.[1]

Furthermore, the Petitioner respectfully submits that reason and policy both dictate the retroactive application of Payton vs. New York, supra. Petitioner notes that said rule has been followed by at least two Federal Circuits in cases in which the arrests predated the decision of Payton vs. New York. See United States vs. Adams, 621 F.2d. 41 (1st Cir. 1980) (arrest of October 17, 1978), and United States vs. Johnson, 626 F.2d. 753 (9th Cir. 1980) (arrest of May 7, 1977) (Writ of Certiorari granted October 5, 1981).

Furthermore, the analysis of the Ninth Circuit in United States vs. Blake, 632 F.2d. 731 (1980) would be applicable instantly In that case, the Ninth Circuit held that where an issue in question had been "clearly foreshadowed" by earlier decisions, the new decision should be applied retroactively. The Ninth Circuit noted that several cases had been decided so that reasonable observers would be on notice that a decision adverse to law enforcement interests would be forthcoming on the issue of the necessity of a warrant to effect an arrest at the residence of an accused. As the Ninth Circuit reasoned, the fundamental source of the decision in United States vs. Prescott, 581 F.2d. 1343 (9th Cir. 1978) (to the same effect as Payton vs. New York, supra), was "the sanctity of the home in England immediately

before the Revolution";therefore, the retroactive application of its decision was only consistent with the law as it had always existed.

The decision of this Court in Payton vs. New York, certainly had been "clearly foreshadowed". The decision of Payton itself reviews many decisions of both State and Federal Courts which had held that a warrant would be required in order to effect a routine felony arrest at the residence of an accused, dating all the way back to Dorman vs. United States, 435 F.2d. 385 (D.C.,1970); see Payton vs. New York, supra, at 575 , Footnotes 3 and 4.

It is also worth noting that this Court had denied Certiorari in United States ex rel Wright vs. Woods, 432 F.2d. 1143 (7th Cir. 1970), Certiorari denied 401 U.S. 996, and in People vs. Ramey, 545 P.2d. 1333 (California 1976), Certiorari denied 429 U.S. 929 (a Federal and State holding that a warrant was required). Petitioner submits that this Court's refusal to accept Certiorari in cases such as this additionally clearly foreshadowed the result announced in Payton vs. New York, supra. The ample precedent referred to in Mr. Justice Stevens' majority Opinion in the Supreme Courts of several States and in the Federal Appellate Courts was sufficient to alert "reasonable observers" to the trend in this area requiring a warrant to effect a routine felony arrest at the residence of a Defendant. [2]

Petitioner further notes that Mr. Justice Stevens cited language in Payton vs. New York from Collidge vs. New Hampshire, 403 U.S. 443 (1972) as authority for the point that a search and seizure inside a home "is presumptively unreasonable" absent exigent circumstances. Mr. Justice Stevens' Opinion goes on to review many other authorities of this Court which have held that a residence requires special protection from intrusion under the

United States Constitution Fourth Amendment.

Petitioner further notes that should this Court deny this Petition, this Petitioner may be without a further remedy in that, pursuant to Stone vs. Powell, 428 U.S. 465 (1976), a person such as Petitioner may be precluded from attacking the conviction herein under Fourth Amendment grounds in an action under the Federal Habeas Corpus system in that the Commonwealth may be able to argue that the State Courts have provided a full opportunity for litigation of that claim. However, Stone vs. Powell is a decision which inherently assumes the ability of the State Appellate System to review and fairly apply Federal Constitutional precepts as announced by this Court. It is submitted that the decision of the Pennsylvania Supreme Court herein to decline to give effect to Payton vs. New York in the instant matter, pursuant to its decision in Commonwealth vs. Miller, supra, may result in Petitioner being deprived of any review of the instant claim if this Petition for Writ of Certiorari is refused.

Finally, Petitioner notes that in Stegald vs. United States, reported at 29 Criminal Law Reporter 3007 (April 21, 1981), this Court held that, absent exigent circumstances, a home may not be searched without a warrant even if the residence is that of a third party. In that case, the arrest occurred in January of 1978, fully two years prior to this Court's decision in Payton vs. New York, supra. Nevertheless, this Court found that the Payton rationale would be controlling in that matter and reversed the conviction therein. In deciding that issue, the Supreme Court rejected the argument of the Government that the imposition of a warrant requirement would have created such substantial practical problems for law enforcement as to justify a prospective application only. This Court held that there was no indication that law

enforcement efforts in those jurisdictions which had such a requirement have suffered as a result and that it viewed the Government's argument on this point "with considerable skepticism". The Court concluded that whatever practical problems might exist would not have outweighed the Constitutional interests at stake in enforcing the warrant requirement of the Fourth Amendment.

The Commonwealth of Pennsylvania may argue that the fact that the Petitioner testified at his trial in a manner which was somewhat similar to that provided in the challenged confession renders any improper admission of that statement to be harmless error. However, the Petitioner's version of the incident at trial was not identical with that in his challenged statement. Critical distinctions between the two versions are reflected in the transcript of the trial, particularly in that Petitioner's trial testimony was that he did not share the criminal intent of the alleged accomplice who actually committed the killing in question. At trial, Petitioner testified that he did not intend for the knife which he apparently supplied to this accomplice to be used for anything more than the limited purpose of cutting open the pockets of the deceased in the course of the Theft. In addition, the fact that the Petitioner was impeached on cross-examination with some of his statements to the Police provides additional reason for this Court to reject the argument which may be advanced along this line by the Commonwealth of Pennsylvania.

Therefore, this Petitioner respectfully submits that the decision of Payton vs. New York, supra, should be given retroactive effect and that the decision of the Pennsylvania Supreme Court in this case must be set aside to the extent that the same

deprived this Petitioner of the relief to which he was entitled pursuant to a proper and retroactive application of Payton vs. New York, notwithstanding any decision of the Pennsylvania Supreme Court interpreting the Fourth Amendment to the contrary.

CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that a Writ of Certiorari should issue from this Court to review the judgment of the Pennsylvania Supreme Court in this matter. The Petitioner respectfully submits that this Court should act to reverse that judgment insofar as the same sustained the action of the lower Courts in denying the Pre-trial Motion of the Petitioner to suppress this confession. Should the Court grant such relief, the matter can be remanded for further proceedings before the Pennsylvania Court whereby a new trial would be held absent the tainted confession.

Respectfully submitted,

BURTON A. ROSE, Esquire
Court-appointed Attorney for
Petitioner

FOOTNOTES

[1] The Fourth Amendment of the United States Constitution has been made applicable to the States pursuant to the Due Process Clause; see Mapp vs. Ohio, 367 U.S. 643 (1960). This Court has repeatedly stated that it will correct judgments of State Courts which incorrectly adjudge Federal Constitutional rights; see Herb vs. Pitcairn, 324 U.S. 117 (1944).

[2] In United States vs. Ross, 655 F.2d. 1159 (D.C. Circuit 1981) , en banc), this Court's decision in Arkansas vs. Sanders, 442 U.S. 753 (June 20, 1979), was applied retroactively to a search and seizure which occurred on November 27, 1978. The District of Columbia Court of Appeals held that a decision expanding the scope of exclusionary rule will not ordinarily be applied retroactively; however, if the decision merely restates and applies a doctrine already in place, so that law enforcement officers are thus charged with knowledge of the decision before the explanative decision is issued, retroactive application will be provided. See United States vs. Peltier, 422 U.S. 531 (1975). The Ross Court found that the decision in Arkansas vs. Sanders, supra, broke no new Constitutional ground since prior decisions of this Court, particularly in United States vs. Chadwick, 433 U.S. 1 (1977), had already established the doctrine in question. Similarly, in the instant case, the principle involved in Payton vs. New York, supra, had been well established in both decisions of this Court and of lower Courts well before 1980.

Appendix

[415] 81 6225

IN THE SUPREME COURT OF PENNSYLVANIA
Eastern District

COMMONWEALTH OF PENNSYLVANIA	:	No. 306 January Term, 1979.
	:	
V.	:	Appeal from Judgments of Sentence of the Court of Common Pleas of Philadelphia, dated July 9, 1979, imposed upon verdicts of murder of the first degree and robbery.
CHARLES GILMORE,	:	
Appellant	:	
	:	
	:	SUBMITTED: October 28, 1981.

OPINION OF THE COURT

FILED: DEC 17 1981

PER CURIAM:

This is a direct appeal from judgments of sentence imposed by the Court of Common Pleas of Philadelphia upon a verdict of guilty of murder of the first degree and robbery. Appellant was sentenced to a term of life imprisonment for the murder and a concurrent term of ten to twenty years' imprisonment for the robbery.

Appellant, who is represented on this appeal by counsel other than his trial counsel, challenges the sufficiency of the evidence to support his conviction of felony murder, as well as the constitutionality of the felony-murder doctrine. Additionally, appellant claims that his arrest was invalid because it was effectuated in his home without an arrest warrant and without probable cause, and that his statements to police following the arrest should have been suppressed. Appellant's final claim of error is that a statement by the victim to police shortly after the victim had regained

APPENDIX "A"

consciousness was erroneously admitted as within the res gestae exception to the rule against hearsay. We are convinced that appellant's claims of error are without merit. Accordingly, we affirm judgments of sentence.

Judgments of sentence affirmed.

Mr. Justice ROBERTS dissents for the reasons set forth in Commonwealth v. Miller, 490 Pa. 457, 417 A.2d 128 (1980)(Roberts, J., dissenting).

81 6225

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES GILMORE,
Petitioner

VS.

COMMONWEALTH OF PENNSYLVANIA,
Respondent

MOTION TO PROCEED IN FORMA PAUPERIS

COMES NOW, CHARLES GILMORE, the Petitioner in the above-entitled matter, by his Court-appointed Attorney, BURTON A. ROSE, Esquire, and respectfully prays this Honorable Court grant leave to proceed in this Appeal to the United States Supreme Court in Forma Pauperis, and in support thereof notes that Petitioner was granted leave by the Common Pleas Court of Philadelphia County and the Supreme Court of Pennsylvania to proceed in Forma Pauperis, and that counsel for your Petitioner was appointed pursuant to Pennsylvania Rule of Appellate Procedure 552 (d) on December 12, 1980.

Respectfully submitted,

BURTON A. ROSE, Esquire
Court-appointed Counsel for
Petitioner

Opposition

RP

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER, 1981

NO. 81-6225

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SUPREME COURT, U.S.

CHARLES GILMORE, Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA,
Respondent

BRIEF FOR RESPONDENT IN OPPOSITION
TO PETITION FOR CERTIORARI

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April 22, 1982

QUESTIONS PRESENTED

1. Should this Court second-guess its earlier refusal to review Pennsylvania's prospective application of its arrest warrant requirement?

2. Should this Court review the legality of petitioner's arrest and subsequent confession, given petitioner's reiteration of the confession at trial?

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OPINION BELOW

The opinion of the Pennsylvania Supreme Court, Commonwealth v. Gilmore, 437 A.2d 944 (Pa. 1981) is reproduced at petitioner's Appendix A.

JURISDICTION

Petitioner seeks review by a writ of certiorari pursuant to 28 U.S.C. §1254(1). The Commonwealth concedes that this Court has jurisdiction to consider the petition, but urges for the reasons stated below that this is not an appropriate case for granting certiorari.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Fourth Amendment:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Fourteenth Amendment (Due Process Clause):

> . . . nor shall any State deprive any persons of life, liberty, or property, without due process of law. . . .

STATEMENT OF THE CASE

Factual Statement

On July 13, 1978, petitioner, Charles Gilmore, and Michael Needham murdered and robbed Ollie Chesson, Jr., stabbing him over fifty times. The trial evidence showed that at the time, petitioner and Needham were members of the "four corners" gang in West Philadelphia. Petitioner knew Needham as "Big Mike," one known "to hurt people." Petitioner's gang name was "Little Man" (N.T. 2.77-2.78, 2.79-2.80, 2.89). That evening, petitioner saw the thirty-two year old decedent lying on the front steps of a West Philadelphia home. Petitioner, who recognized the decedent as a "wino" at whom he used to "throw rocks," immediately rifled Chesson's pockets "to make some easy money"

(N.T. 2.64, 2.82). Needham joined petitioner. When Chesson protested, Needham broke a walking stick over his head, rendering him bloody and unconscious. Petitioner then gave Needham a knife with a four to five inch blade with which Needham stabbed Chesson over fifty times while petitioner waited. The two assailants then fled.

Within six minutes of decedent's discovery by police, seconds after he regained consciousness, Chesson stated that two Negro males had robbed him of twenty dollars; Chesson then slipped into unconsciousness and died from the knife wounds (N.T. I, 28-32). The trial evidence also showed that after the stabbing, Needham returned the knife to petitioner who "sold it to some guy" (N.T. 2.61-2.65).

The police were unable to solve the Chesson killing until July of 1978, when

Needham was murdered. During their investigation of the Needham murder, the police learned that petitioner and Needham killed Chesson in 1973. Accordingly, the police arrested petitioner in his home in the early evening of July 13, 1978 (N.T. 11/2/78, 14-22, 30-40). After waiving his Miranda rights, petitioner confessed fully to the crime, urging however, that he intended only to rob the victim (N.T. 11/2/78, 55-56; N.T. 2.47-2.67).

Finally, petitioner phoned his mother after his arrest and said that he and "Big Mike . . . was robbin' the man, and I had a knife . . . I seen him [Needham] kill the dude [Chesson] with the knife I gave him" (N.T. 2.67).

Procedural Statement

Petitioner's motion to suppress his confession was denied by the Honorable George J.

Ivins of the Philadelphia Common Pleas Court. Petitioner was later convicted of first degree murder and robbery after a non-jury trial before the Honorable Charles P. Mirarchi, Jr., also of the Philadelphia Common Pleas Court. Judge Mirarchi imposed concurrent imprisonment sentences of life and ten to twenty years. Petitioner appealed to the Pennsylvania Supreme Court alleging, inter alia, the illegality of his warrantless arrest and the resulting "poisonous fruit" -- his confession. The Pennsylvania Supreme Court affirmed, holding that under Commonwealth v. Miller, 490 Pa. 457, 417 A.2d 128 (1980), cert. denied, 449 U.S. 1113 (1981), the arrest warrant requirement set out in Commonwealth v. Williams, 483 Pa. 293, 396 A.2d 1177 (1978), cert. denied, 446 U.S. 912 (1980), would not be applied retrospectively to petitioner's arrest. Commonwealth v. Gilmore, 437 A.2d 944 (Pa. 1981) (see Petitioner's Appendix A).

Petitioner seeks certiorari, urging this Court (1) to reconsider its refusal in Commonwealth v. Miller, supra, to review Pennsylvania's prospective application of its arrest warrant requirements and (2) to hold Payton v. New York, 445 U.S. 573 (1980) fully retroactive.

REASONS FOR DENYING THE WRIT

SUMMARY OF ARGUMENT

This Court has already refused to review Pennsylvania's prospective application of its arrest warrant requirement. Petitioner does not show why that reasonable decision should be abandoned.

The legality of petitioner's arrest is, in any event, irrelevant. There is no "poisonous fruit" of the arrest: petitioner himself reiterated and relied upon his confession at trial.

I. THIS COURT HAS ALREADY REFUSED TO REVIEW PENNSYLVANIA'S PROSPECTIVE APPLICATION OF ITS ARREST WARRANT REQUIREMENT.

Only last year, this Court refused to review Pennsylvania's prospective application of its arrest warrant requirement. Commonwealth v. Miller, supra. There is, thus, no

reason to review the application of Miller below.

Certainly Miller is correct: the Pennsylvania Supreme Court closely followed this Court's oft-repeated three-prong retroactivity test:

> (a) the purpose to be served by the new standards, (b) the extent of the reliance by law enforcement authorities on the old standards, and (c) the effect on the administration of justice.

Stovall v. Denno, 388 U.S. 293, 297 (1967).[1] The Pennsylvania Supreme Court correctly found that its arrest warrant requirement did not implicate the truth-determining

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[1] Accord Hankerson v. North Carolina, 432 U.S. 233 (1977); Daniel v. Louisiana, 419 U.S. 31 (1975); Linkletter v. Walker, 381 U.S. 618 (1965).

process. Commonwealth v. Miller, supra, 490 Pa. at 473, 417 A.2d at 136-37.[2] Thus, prospective application was virtually mandatory, given the Court's additional findings that retroactive application would create a grave burden for the police who relied heavily on prior law. Commonwealth v. Miller, supra, 490 Pa. at 472-73, 417 A.2d at 136-37.[3]

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[2] Compare Desist v. United States, 394 U.S. 244 (1969) (plurality) (fourth amendment holding of Katz v. United States [citation omitted] does not implicate the truth-determining process); Linkletter v. Walker, supra (fourth amendment holding of Mapp v. Ohio [citation omitted] does not implicate the truth-determining process).

[3] See Bowen v. United States, 422 U.S. 916 (1975); United States v. Peltier, 422 U.S. 531, 535 (1975); Williams v. United States, 401 U.S. 646, 653 (1971) (plurality); Desist v. United States, supra, 394 U.S. at 249 (all holding that the reliance and burden retroactivity factors become controlling once it is determined that the new rule does not implicate the truth-determining process).

If necessary, the Commonwealth will discuss at another time the dubiety of ever suppressing a murder confession on fourth amendment grounds. Suffice it to say, the refusal below to suppress this defendant's murder confession was eminently reasonable and, as this Court has already determined, unworthy of certiorari.

II. THE LEGALITY OF PETITIONER'S ARREST IS IRRELEVANT AS PETITIONER RELIED UPON THE ARREST "FRUIT," HIS MURDER CONFESSION, AT TRIAL.

This case presents no arrest warrant-retroactivity issue, nor any other claim warranting certiorari.

At his non-jury trial, petitioner substantially reiterated his confession, testifying that he saw the decedent passed out on a stoop, decided to "make some easy money" by robbing him, began to rifle the decedent's pockets,

gave his knife to Needham who stabbed Chesson, and walked away with Needham, who later returned the weapon to petitioner (N.T. 2.76-2.90).[4] Indeed, this was the heart of petitioner's unsuccessful trial defense: that he intended only to rob Chesson; he "loaned" Needham the knife only to help open Chesson's pockets (N.T. 2.98-2.102).

Under controlling Pennsylvania law, petitioner's reiteration of the confession rendered harmless police error committed in arresting petitioner or in obtaining the confession. Commonwealth v. Brantner, 486 Pa. 518, 527 n.7, 406 A.2d 1011, 1016 n.7 (1979).

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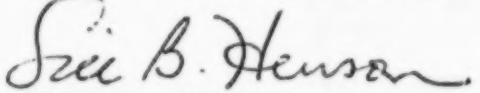
[4] The trial notes that include the introduction of petitioner's confession are attached at Appendix A. Petitioner's complete trial testimony is attached at Appendix B.

Thus, the retroactivity of Payton v. New York, supra, is irrelevant to this case. Even if this Court should apply its 1980 arrest warrant requirement to petitioner's 1978 arrest, there can be no reversible error: petitioner's adoption and reiteration of the "poisonous fruit" of the arrest has rendered any arrest error harmless.

CONCLUSION

For the foregoing reasons, the Commonwealth respectfully requests that the petition for a writ of certiorari to the Pennsylvania Supreme Court be denied.

Respectfully submitted,



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EDWARD G. RENDELL
District Attorney
Philadelphia County

Appendix

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

TRIAL DIVISION

- - -

COMMONWEALTH	:	AUGUST SESSIONS, 1978
	:	
	:	NO. 998 - PIC, GENLY;
	:	PIC, CONCEALED WEAPON;
	:	PROHIBITED OFFENSIVE
	:	WEAPON
	:	
	:	NO. 999 - MURDER;
vs.	:	VOLUNTARY MANSLAUGHTER
	:	
	:	NO. 1000 - INVOLUNTARY
	:	MANSLAUGHTER
	:	
	:	NO. 1001 - CRIMINAL
	:	CONSPIRACY
	:	
CHARLES GILMORE	:	NO. 1002 - ROBBERY

- - -

Courtroom 613
City Hall
Philadelphia, Pennsylvania

Tuesday, January 2, 1979

- - -

BEFORE: HON. CHARLES P. MIRARCHI, JR., A.J.

- - -

APPEARANCES:

RODGER KING, ESQ.
Assistant District Attorney
For the Commonwealth

HENRY J. LUNARDI, ESQ.
Representing the Defendant

- - -

VOLUME II

APPENDIX "A"

SERGEANT HERBERT GIBBONS,

Badge Number 8657, Homicide Division, Philadelphia Police Department, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KING:

Q Sergeant Gibbons, did you have an occasion to participate in the investigation of the circumstances surrounding the death of one Ollie Chesson, Jr.?

A Yes, I did.

Q During the course of your participation, did you have an occasion to come into contact with the defendant in this case, Charles Gilmore?

A I did. I came in contact with the defendant, Charles Gilmore, at about 7:10 P.M. on July the 13th, 1978.

Q Now, prior to you coming into actual contact with Mr. Gilmore in 1978, did you have an occasion to participate in the investigation which led you to come into contact with Mr. Gilmore?

A Yes, I would say about a week prior to my personal contact with Mr. Gilmore, I had my attention directed towards the defendant, that is, I had sent Detective Pernell (phonetic) to Mr. Gilmore's home to

interview him and also to bring him into Homicide headquarters.

Q You stated that you sent Detective Parnell; what were your duties in summary form in July of 1978?

A Well, one incident in which an individual by the name of Michael Needham was killed, and we were investigating that matter; and as a result of that investigation, there was an interview that was referred to me by Detective Lynch, one that he had taken with one Antoinette Chesson. Bearing that in mind, I had sent Detective Howard Wade and Detective George Smith to bring Mr. Gilmore into Homicide headquarters.

Q Now, prior to Mr. Gilmore coming into the Homicide Division, did you have an occasion to review the investigation into the circumstances surrounding the death of one Ollie Chesson, Jr.?

A Yes, I did.

Q Did Mr. Gilmore in fact come into Homicide?

A He did.

Q When did he come in?

A He was transported to Homicide headquarters by myself and Detective Buck on July 13th, 1978, and he arrived at our office which I recorded the time at about 7:42 P.M.

Q Now, after you arrived at Homicide, what if

anything did you give the defendant, Charles Gilmore, as to why he was in Homicide?

A If I may clarify the question that you asked, first of all, Mr. Gilmore was advised as to my interest in interviewing him when I arrived at his residence immediately after identifying myself.

Q When was that, Sergeant?

A Well, I identified myself at 7:10 P.M. when Mr. Gilmore opened the door. I advised him that I was Sergeant Gibbons, and with me was Detective Buck, and that we wanted to talk to him regarding the death of Michael Needham and also an Ollie Chesson.
Mr. Gilmore had made certain responses that he was aware that we wanted to talk to him about both these matters because he had talked to Detective Smith, I believe, two days prior to my arrival there; and Mr. Smith or Detective Smith had told him that we wanted to talk to him regarding both of these investigations.

Q Now, what was the address of Mr. Gilmore on that date, Sergeant?

A At 2107 South Etting Terrace. That's in South Philadelphia.

Q Now, after you identified yourself and after you told him why you were at his residence, what did

you do after that, sir?

A I inquired as to whether or not he would be willing to accompany us to Homicide Division headquarters to which he consented, and he was then, as I said, transported by Detective Buck and myself in an unmarked police vehicle to the Police Administration Building, that is, Room 104 at Homicide Division headquarters.

There I began taking certain personal data or information from Mr. Gilmore such as his name, address, birth date and other personal data which I recorded on a preinscribed form.

I then left and I instructed Detective William O'Brien to continue with the questioning of Mr. Gilmore regarding the deaths of Ollie Chesson and Michael Needham.

MR. KING: Your Honor, if the Court pleases, I would request at this time that this item be marked for identification as Commonwealth's Exhibit 4.

(Whereupon the abovementioned item, Commonwealth's Exhibit C-4, was marked for identification.)

BY MR. KING:

Q Sergeant, I show you, sir, what has been marked

for identification as Commonwealth's Exhibit 4.

A Yes, it is a photocopy of the form of the chronology that I prepared in reference to the time the defendant, Charles Gilmore, was in police custody.

MR. KING: Now, your Honor, due to the presence of certain material on that particular exhibit, at this particular time I would ask leave of the Court not to review that particular matter.

MR. LUNARDI: That's all right with defense counsel.

BY MR. KING:

Q How long was the defendant in the presence of Detective O'Brien?

A He was in the presence of Detective O'Brien for what I recorded now, an hour and forty-five minutes, 8:00 P.M. to 9:45 P.M.

Q After you brought Mr. Gilmore into Homicide and after he was in the presence of Detective O'Brien for the time you have just related, did you have an occasion to come back into contact with Mr. Gilmore?

A Yes, at 9:46 P.M. I approached Mr. Gilmore, and I then told him that I wanted to question him regarding the homicide by stabbing of Michael Needham, twenty-three-year-old Negro male, which occurred on

July the 2nd, 1978, about two o'clock A.M., outside of 1703 North 42nd Street; and also the homicide which I explained to him which is the murder by stabbing of Ollie Chesson which occurred on July the 18th, 1973. I told him, prior to questioning him regarding this, that it would be necessary to advise him of his Miranda warnings, and I then explained to him the Miranda warnings, and I asked him questions regarding his understanding of those warnings.

Q For the benefit of the Court and counsel, could you relate the information that you gave this defendant concerning his Miranda warnings?

A Yes, I can. I told him that I had a duty to explain to him and to warn him that he has the following legal rights, told him:

"A. You have a right to remain silent and do not have to say anything at all.

"B. Anything you say can and will be used against you in court.

"C. You have a right to talk to a lawyer of your own choice before we ask you any questions and also to have a lawyer here with you while we ask you questions.

"D. If you cannot afford to hire a lawyer and you want one, we will see that you have one

provided to you free of charge before we ask you any questions.

"2. If you are willing to give us a statement, you have a right to stop at any time you wish."

I am reading from a card which is labeled "75 Miscellaneous 3," dated "6-24-70," and from this very card, I turned it over, and I then began to ask Mr. Gilmore questions that appear on the reverse side of this card:

"Number 1. Do you understand you have a right to keep quiet and do not have to say anything at all?" His answer was, "Yes." I then typed his answer on this interview record which I was recording at the time that this interview was being conducted.

"Number 2. Do you understand that anything you say can and will be used against you?" He said, "Yes." And I then typed that answer on this form.

"Number 3. Do you want to remain silent?" His answer was, "No." And I typed that answer on the form.

"Number 4. Do you understand that you have a right to talk with a lawyer before we ask you any questions?" His answer was, "Yes." And I recorded

that answer.

"Number 5. Do you understand that if you cannot afford to hire a lawyer, and you want one, we will not ask you any questions until a lawyer is appointed for you free of charge?" His answer was, "Yes." And I recorded that answer.

"Number 6. Do you want either to talk with a lawyer at this time, or to have a lawyer with you while we ask you questions?" His answer was, "No." And I recorded that answer.

"Number 7. Are you willing to answer questions of your own free will, without force or fear, and without any threats or promises having been made to you?" His answer was, "Yes." And I recorded that answer.

Q Now, Sergeant, what was the appearance of the defendant, Charles Gilmore, at that time and at that location?

A By my description, I would say he was alert; he was responsive to the questions that I had asked him; and he appeared to be, in my judgment, intelligent and was aware of what was going on around him.

Q During the course of the interview which you are relating for the benefit of the Court, did you threaten Mr. Gilmore in any way?

A No, absolutely not.

Q Did you strike him in any way?

A No, no, sir.

Q Did you coerce him in any way?

A No, sir.

Q Did anyone in your presence threaten him?

A No.

Q Did anyone in your presence attempt to coerce him in any way?

A No.

MR. KING: Your Honor, if the Court pleases, I would request at this time that this item be marked for identification as Commonwealth's Exhibit 5.

MR. LUNARDI: If the Court pleases, at this time, and only to protect the record and out of the tender regard of Mr. Gilmore, the suppression notion in this case already having been decided by another judge of this Court, we will preserve our record once again by objecting to the introduction of any of these statements, and we ask to have continuing objections to each and every statement.

THE COURT: The objection is so noted and overruled.

(Whereupon the abovementioned item, Commonwealth's Exhibit C-5, was marked for identification.)

MR. KING: I would make the same request, your Honor.

BY MR. KING:

Q Sergeant, I show you, sir, what has been marked for identification as Commonwealth's Exhibit 5.

A Yes, I can identify it. It is an investigation interview record that I just previously alluded to as to the form I recorded the answers of the Miranda warnings on, and also concerns the particular investigation that was being conducted at that time.

It has my name as being the person doing the interviewing and the name of the person being interviewed which is Charles Gilmore.

THE COURT: One moment.

May I see counsel, please.

(Whereupon a sidebar conference was held off the record.)

(Whereupon the sidebar conference was concluded.)

- - -

MORNING SESSION

- - -

- - -

AFTERNOON SESSION

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COMMONWEALTH'S EVIDENCE CONTINUED

- - -

MR. KING: Your Honor, at the close of the proceedings, Sergeant Gibbons was on the stand under direct examination.

(Whereupon Sergeant Herbert Gibbons resumed the witness stand.)

- - -

FURTHER DIRECT EXAMINATION

BY MR. KING:

Q Sergeant, on the exhibit which has been marked for identification as Commonwealth's Exhibit 5 that you have identified as a statement from the defendant, Charles Gilmore, in that statement, Sergeant, does the defendant admit being present during the stabbing of Ollie Chesson?

A No, he does not admit being present.

Q Does he admit being present during the stabbing of Michael Needham?

MR. LUNARDI: Objection. That's not

the subject of this inquiry.

THE COURT: Sustained.

BY MR. KING:

Q When did this statement start, Sergeant?

A This statement started at 9:46 P.M.

Q When did it end?

A And it ended at 10:30 P.M.

Q Does there appear a signature at the bottom of the first page?

A Yes, there's a signature at the bottom of page 1. It's the signature of Charles Gilmore.

Q How many pages make up what has been marked for identification as Commonwealth's Exhibit 5?

A This exhibit is composed of three pages.

Q After what has been marked for identification as Commonwealth's Exhibit 5 was completed, did you have an occasion to come into contact with Mr. Gilmore at another time and at another place?

A Yes, later during that same evening at about 11:50 P.M. I came in contact with Mr. Gilmore in Room 06 which is in the basement area of the Police Administration Building Interview Room; and I then reinterviewed Mr. Gilmore.

MR. KING: Your Honor, if the Court pleases, I would request at this particular

time that this item be marked for identification as Commonwealth's Exhibit 6.

MR. LUNARDI: I have a copy.

(Whereupon the abovementioned item, Commonwealth's Exhibit C-6, was marked for identification.)

BY MR. KING:

Q Sergeant, I show you what has been marked for identification as Commonwealth's Exhibit 6; can you identify that particular item?

A Yes, I can.

Q What is that item?

A It is the interview that was taken with Mr. Gilmore in Room 06 on July the 13th and ended at 12:33 A.M. on July 14th.

Q You use the term "reinterviewed;" by that, what do you mean?

A In that there was a break in between the interview that is marked Exhibit C-5 and C-6. So I termed the second interview a reinterview. It still pertained to the same subject matter.

Q What if any information did you give Mr. Gilmore between the first interview which has been marked for identification as Commonwealth's Exhibit 5 and the second interview which has been marked for

identification as Commonwealth's Exhibit 6?

A Could you rephrase your question? I am not exactly sure just what you meant by that.

Q What if any information did you give the defendant prior to the taking of what has been marked for identification as Commonwealth's Exhibit 6?

A Okay, yes. I did advise Mr. Gilmore that we had interviewed another witness, one Antoinette Williams-Chesson, and he informed me that he knew her, and I then advised him that information that I had gotten from Antoinette conflicted with the first statement that I had taken from him; and also I informed him that we had interviewed another person. His name escapes me at the moment. However, there was another person that we had interviewed, and I advised him that this second person's interview did conform with that which we had gotten from Antoinette Chesson, and both of them differed from what he had told me.

Q After telling the defendant the information that you gave him concerning the contents of the two interviews, did the defendant agree to give you a statement concerning the circumstances surrounding the stabbing of Ollie Chesson, Jr.?

A Yes. Prompted by a conversation that I had with another police officer, I walked into the room

where Mr. Gilmore was sitting, and I asked Mr. Gilmore, "is there something you want to say to me about Ollie Chesson?" And he then stated, yes, he wanted to talk to me. At that time I took the information that is in Exhibit C-6.

Q Could you indicate for the benefit of the Court and counsel the contents of what has been marked for identification as Commonwealth's Exhibit 6?

A Yes. The question was asked of Mr. Gilmore:

"Charles, in reference to the stabbing death of Ollie Chesson, Jr., would you go on in your own words and tell us what you know concerning his death."

His answer was: "It was me and Mike on the corner and some older guys, and we was drinking. I was kind of high and I wasn't too interested on sticking around because like a girl had walked by, so I started talking to her and walking with her. I walked her about three blocks to Mantua Avenue. Then I started coming back to where Mike was. Before I got there to Girard Avenue I saw a guy laying on the ground. I knew the guy. His name was Ollie, and I started going through his pockets. Mike came up while I was going through his pockets, and he started checking him too. Ollie woke up and sat up, and Mike

hit him in the head with the cane. Mike was trying to get into Ollie's back pocket, but he couldn't get into it. He felt something in his pocket. Mike knew I had a knife on me and he asked me for it. I gave it to him and he cut him. I ran across the street and stood near the church, then Mike came across. Then we went towards 42nd and Viola, and before we got there, he went home on Stiles Street. I got the knife back from Mike the next day -- no, I don't think it was the next day, but I got it back. The reason I don't go right home after Mike started stabbing him was because I didn't want him to think I was a chump, and ran away.

"Question: What location was it that you found Ollie lying on the sidewalk?

"Answer: About three houses from the corner of 42nd and Girard Avenue.

"Question: What was the matter with Ollie that he was laying there?

"Answer: He was drunk.

"Question: What were you looking for when you were going through Ollie's pockets?

"Answer: Money.

"Question: Did you find any?

"Answer: No.

"Question: When Ollie started waking

up, why did Mike hit him?

"Answer: I don't know.

"Question: You stated he hit him with a cane; did this cane break?

"Answer: Yes, he hit him hard.

"Question: What area of the body did he hit him with?

"Answer: In his head.

"Question: When the cane broke, did Mike just leave it?

"Answer: Yeah, he didn't come back with it after I ran.

"Question: What is Michael's full name?

"Answer: Michael Needham, twenty-three-twenty-four. He lives on Stile Street. He got killed the week before last.

"Question: Did you hit Ollie at all?

"Answer: No.

"Question: What kind of knife did you give Mike?

"Answer: It was a big pocket-type knife, about eight or nine inches. All the way open up, the blade was about four or five inches.

"Question: Did you know what Mike was going to do with the knife when you gave it to him?

"Answer: I thought he was going to cut his pocket out 'cause he had felt something.

"Question: How many times did Mike cut Ollie?

"Answer: I only saw him cut him once and then I ran.

"Question: Where did he cut him that you saw?

"Answer: Either in the shoulder or the neck.

"Question: Did Michael tell you he got any money from Ollie?

"Answer: No, he didn't tell me.

"Question: Had you know Ollie before this night?

"Answer: About a year maybe.

"Question: Did he know you?

"Answer: Not by name. We used to play with him, throw rocks at him. He was a wino.

"Question: How old were you when Ollie was killed?

"Answer: Fifteen.

"Question: How old was Michael?

"Answer: Seventeen or eighteen.

"Question: What happened to the knife

you used?

"Answer: I sold it to some guy.

"Question: Do you recall the year this incident happened?

"Answer: I didn't remember it exactly until you spoke on it.

"Question: How far did you go in school?

"Answer: Tenth grade, Southern.

"Question: Can you read and write the English language?

"Answer: Yes."

Q Now, when did this statement commence, Sergeant?

A This, the typing of this statement, commenced at 12:01 A.M. on Friday, July the 14th; and the entire statement was concluded at 12:33 A.M.

Q Does a signature appear on page 4?

A Yes, there is a signature of Charles Gilmore, the defendant.

Q Does a signature appear on page 5?

A There's a signature on page 5 of Charles Gilmore, the defendant.

Q Is there a signature on page 6?

A There's a signature on page 6 in that of

Charles Gilmore, the defendant.

Q When was that signature affixed, sir?

A After it was presented to Mr. Gilmore to read. After he read it, he was requested to sign same.

MR. KING: Now, if the Court pleases, I would request at this time that this item be marked for identification as Commonwealth's Exhibit 7.

(Whereupon the abovementioned item, Commonwealth's Exhibit C-7, was marked for identification.)

BY MR. KING:

Q Sergeant Gibbons, after you completed the typing of the statement and after the defendant read and signed the statement, did you remain in his presence?

A Yes.

Q What happened after he read and signed the statement while you were in his presence?

A He requested, after he signed the statement, he requested to make a telephone call, and he told me that he wanted to call his mother. He was taken to a telephone, and he did place a call. I did hear him say, "Yes, yes," apparently in response to a question that was being asked by the other person.

He then stated that he was arrested, and he then said the word "murder," and he then began to make this statement which was written down by Detective Harrison in my presence, and he said, "We was robbin' the man, and I had a knife. Big Mike knew I had a knife. He told me to give him the knife so he could slash the dude's pockets. Then I seen him kill the dude with the knife I gave him."

Q Now, after you heard this conversation, did you have any further contact with the defendant, Charles Gilmore?

A No other contact other than he was taken to a men's lavatory, and he was then taken to the Arraignment Court.

MR. KING: Cross-examine.

- - -

CROSS-EXAMINATION

BY MR. LUMARDI:

Q Sergeant Gibbons, C-7, the conversation with his mother, Charles' mother on the phone, what's been written down on C-7 was written at your direction?

A No, sir.

Q Did you write it?

A No, sir.

Q Who wrote it?

A Detective Harrison, John Harrison.

Q Did you hear everything Charles said?

A Yes.

Q I know you had been asked this question before in another context, but let me ask you once more.

Prior to your obtaining the statement marked as C-6, did you or anyone at your direction rewarn Charles of his, what you earlier called his Miranda warnings?

A Yes, he was given some Miranda warnings again, and they appear on another form that was presented to him.

THE COURT: I am sorry, I am not sure I understand. Is that after C-6, the statement, was taken?

MR. LUNARDI: Prior to C-6.

BY MR. LUNARDI:

Q That statement was taken in the Polygraph Room, is that correct, in the basement?

MR. KING: Objection, your Honor.

THE COURT: Overruled.

THE WITNESS: That is what the room is, a Polygraph Room.

BY MR. LUNARDI:

Q My question is: Did you rewarn him?

A Yes.

Q You did rewarn him?

A Yes.

Q In the course of your investigation, were you investigating the Chesson case and the Needham case, just the Chesson or just the Needham case?

A Both; I was interested in both cases.

Q And in the course of your investigation of the Needham case, did you have occasion to find out certain things about the background of Michael Needham?

A During the investigation of the Chesson case?

Q Either.

MR. KING: Objection, your Honor. Counsel interposed an objection to any reference to Mr. Needham during direct examination by the Commonwealth.

THE COURT: Overruled.

BY MR. LUNARDI:

Q In the course of your investigation into the Needham, Chesson cases, if you will, would in some way seem connected, did you have occasion to learn certain facts about Mr. Needham, shall we say, in his lifestyle?

A That information again I had gotten from

Mr. Gilmore in that Mr. Gilmore had told me that Michael --

THE COURT: Well, now, the question doesn't go to what the information was, only as to whether you had gotten information; is that correct, Counsel?

MR. LUNARDI: Yes.

THE WITNESS: Yes, that he did drink.

BY MR. LUNARDI:

Q With regard to Michael, you did get information with regard to Big Mike?

A Yes.

Q By "Big Mike," we mean Michael Needham?

A Yes.

Q The information you got was that, I think, he drank?

A Yes.

Q That's all you found out about him?

A Yes

Q You had never heard of Michael Needham with reference to the Four Corners Gang?

A Yes, that during the time of the Chesson incident, Michael and Mr. Gilmore were members of the Four Corners Gang.

Q Did you hear of Michael as the runner for that

gang?

A No.

Q Did you find out why he was called Big Mike?

A No.

MR. LUNARDI: That's all, Judge.

Thank you, sir.

MR. KING: I have no further questions of Sergeant Gibbons at this time, your Honor.

MR. LUNARDI: Oh, I am sorry, I forgot one. May I?

THE COURT: Yes.

- - -

FURTHER CROSS-EXAMINATION

BY MR. LUNARDI:

Q Sergeant Gibbons, I apologize, but I don't think you will need your papers for this anyhow.

At the time you were interviewing Mr. Gilmore with reference to the Chesson case and you were taking Mr. Gilmore's statements, you were aware, were you not, you were operating under what is now shorthandedly the Six-Hour Rule with regard to statements and arraignments?

A I was aware of that, yes.

Q And I note that according to the chronology which has been marked C-4, Mr. Gilmore was arraigned

roughly twenty-five minutes short of six hours from the time he first left his home with you and Detective Buck; is that correct?

A That's correct.

Q Do I understand that subsequent to the 12:33 A.M. phone call to his mother, that you didn't inquire any further into, shall we say, to ask him for an explanation of what he had said on the phone?

A No, I didn't see any particular reason to inquire any further. Also, I was quite observant of the Six-Hour Rule as well.

Q You know you were working under that time pressure, that he had to be processed and brought down?

A Yes.

MR. LUNARDI: All right. Thank you.

MR. KING: Your Honor, may I have a second?

(Brief pause.)

MR. KING: Your Honor, at this time the Commonwealth would move for the admission of those items of evidence that had been marked for identification as Commonwealth's Exhibits 1 through 7. Upon --

THE COURT: Mr. King, the Court has not seen Commonwealth's Exhibits 1 through 7,

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

TRIAL DIVISION

- - -

COMMONWEALTH	:	AUGUST SESSIONS, 1978
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	:	PIC, CONCEALED WEAPON;
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	:	NO. 1001 - CRIMINAL
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	:	
CHARLES GILMORE	:	NO. 1002 - ROBBERY

- - -

Courtroom 613
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Tuesday, January 2, 1979

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BEFORE: HON. CHARLES P. MIRARCHI, JR., A.J.

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APPEARANCES:

ROGER KING, ESQ.
Assistant District Attorney
For the Commonwealth

HENRY J. LUNARDI, ESQ.
Representing the Defendant

- - -

VOLUME II

APPENDIX "B"

- - -

DEFENDANT'S EVIDENCE

- - -

MR. LUNARDI: At this point I would call Charles Gilmore.

- - -

CHARLES GILMORE, 2107 Etting Terrace, Philadelphia, Pennsylvania, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LUNARDI:

Q Charles, I am going to ask you to speak as distinctly as you can and keep your voice up so everyone can understand you.

How old are you?

A Twenty-one.

Q How old were you on July the 18th, 1973?

A Fifteen.

Q Did you know Michael Needham?

A Yes.

Q How old was he on July the 18th, 1973?

A About seventeen or eighteen.

Q Were you associated with a gang called the

Four Corners Gang?

A Yeah. I wasn't really a member, but I hung around with them a lot.

Q You hung around?

A Yes.

Q And where did they hang?

A Around 42nd and Leidy Avenue.

Q Where is that in relation to 42nd and Girard?

A Two blocks away.

Q To your knowledge was Michael Needham associated with the Four Corners Gang then?

A Yes.

Q What if anything was his connection with that gang?

A He was the runner of all the younger guys.

Q What do you mean "the runner"?

A The leader.

Q The leader?

A Yes.

Q What was his nickname?

A Big Mike.

Q Why, if you know, was that his nickname?

A Because he was big and he was bad.

Q He was big and he was bad?

A Yes.

Q What do you mean by "bad"?

A He could fight good.

Q On July 18th, 1973, were you there when Big Mike stabbed Ollie Chesson?

A Yes.

Q Tell the Judge what happened that night.

A Well, me and Mike was together, right.

Q Where?

A 42nd and Stiles Street, drinking wine with some older guys. Like a girl had walked by, and I started to walk with the girl, and I walked her to about Mantua Avenue, and I came back. When I came back, I seen Ollie laying on the step. He was drunk, and I was a little high off the wine we was drinking. So I figured I could make a couple of dollars, and I went into his pocket but I didn't find anything in his pocket. And --

Q By the way, when you went in his pocket, did you have a knife on you?

A Yes.

Q Did you use the knife?

A No.

Q I am sorry, go ahead.

A Well, I went in his pocket, and Mike had walked up, and he like came and took over the whole

situation.

Q Well, explain that; what do you mean "he took over the whole situation"?

A He like told me to get back, probably thinking I would find something before he did.

Q All right. What happened?

A I got back.

Q When you say "you got back," what do you mean?

A I stepped away from him. I stepped back towards the curb up against a car.

Q All right. What happened?

A He started going through his pockets, and Ollie started waking up. He sat up, and Mike hit him with the cane he had.

Q What happened when he hit him?

A The guy fell back down.

Q What happened to the cane?

A The cane broke.

Q What happened next?

A He threw the piece that he had left in his hand. He threw that down, continued going through his pockets. He couldn't get into his back pocket, and he knew that I had a knife on me. So he asked me to give him the knife. I looked at him kind of surprised and shocked because like he was known for

like surprises like that, you know, hurt people and things like that. And like he asked me for the knife; and I gave him the knife after he asked me the second time, because he said he was only going to cut his pocket out.

When I handed him the knife, he cut him up on the shoulder and his neck.

Q Indicating the right shoulder and neck area of Ollie Chesson?

A I am not sure.

Q You are pointing to an area of your body; is that the place on Ollie?

A Around here.

Q The left shoulder area?

A Yeah.

Q All right. What did you do when he stabbed him?

A After he stabbed him, I went across the street, and I walked about a half a block to 42nd, like where 42nd splits up and Girard Avenue splits up to half a block, and I walked to the church and I waited for Mike. I waited there for about two minutes. He came across the street.

Q Girard Avenue at 42nd Street is pretty wide, isn't it?

A Yes.

Q The 15 Trolley runs in the middle of the street?

A Yes.

Q This incident with Ollie Chesson -- strike that.

Behind 42nd and Girard in one direction is Fairmount Park; is that right?

A Yes.

Q Did this incident with Ollie Chesson take place on the Fairmount Park side of Girard, or what you might want to call the City side?

A The City side.

Q And you ran across the street to the park side?

A Yes.

Q How soon after Big Mike took the knife and stabbed Ollie Chesson, how soon after that action did you run across the street; did you stay around a little bit to see more, or what?

A No, the minute he stabbed him, I ran across the street.

Q And the church that you are talking about, is that directly across Girard; would you have to cross or --

A Have to cross and go down a half a block.

Q But you waited at the church?

A Yeah, because I didn't want him to think I was scared, a chump and a coward. I didn't want him to think I was running and going to tell on him either.

Q Why not?

A He wouldn't have liked it.

Q What made you give him the knife in the first place?

A Because I was afraid of him.

Q Did you use the knife on Ollie Chesson?

A No.

Q Did you ever have any intention of using the knife on Ollie Chesson?

A No.

Q Did you want to give the knife to Big Mike?

A No.

MR. LUNARDI: Cross-examine.

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CROSS-EXAMINATION

BY MR. KING:

Q Mr. Gilmore, in 1973, how old were you?

A Fifteen.

Q And when you saw Ollie Chesson, is it your testmony it was your intention to make some easy money?

A Yes.

Q And when you went in his pocket, you were looking for easy money, weren't you?

A Yes.

Q You were the first person who went into Mr. Chesson's pocket, weren't you?

A Yes.

Q You had that knife with you at that time, didn't you?

A Yes.

Q How long was the blade?

MR. LUNARDI: Objection, your Honor. The man was beginning to explain his answer.

THE COURT (To the defendant): Did you have something you wanted to add to that?

THE DEFENDANT: Yes. I had the knife on me, but I never had no intentions of using it.

BY MR. KING:

Q How long was this particular knife?

A The blade was about four inches.

Q After you went through Mr. Chesson's pockets, did you remove anything from his pockets?

A No, I only had time to go into one of his pockets before Mike came up.

Q But didn't you testify on direct examination

that before you saw Ollie Chesson, you and Big Mike were together?

A Yes.

Q And you walked up in the direction of Ollie Chesson with Big Mike, didn't you?

MR. LUNARDI: Objection.

THE DEFENDANT: No.

THE COURT: Overruled.

BY MR. KING:

Q Where was Big Mike when you walked up to Ollie Chesson to make some easy money?

A He was still around the corner on his way.

Q Did you ever talk to him about the fact that you wanted to make some easy money?

A No.

Q What were his exact words when he asked you for the knife?

A He said, "Give me that knife you got."

Q How did he know that you had a knife?

A He was -- he knew that I had it. He seen me with it earlier.

Q You were one of his walkers, weren't you?

A No.

Q Are you sure about that?

A I am positive.

Q If you were not close to him, that is, if you were not a walkie of his, how did he know you had a knife?

A Because I had pulled it out.

Q And when you pulled it out this particular time, were you afraid of Big Mike?

A Yes, I was.

Q And when you pulled it out the first time, what was the purpose for you pulling it out the first time?

A I was just showing it off.

Q Did you hear Dr. Catherman testify?

A Yes.

Q Did you hear him testify to the number of stab wounds on the body of Ollie Chesson, Jr.?

A Yes.

Q Is it still your testimony that all you saw was one stab?

A Yes, it is.

Q Now, after this particular stabbing, you took the knife back from Big Mike, didn't you?

A He gave it back to me.

Q You saw him stab a man with that knife, didn't you?

A Yes.

Q Why didn't you take the knife --

A Because it was mine and I was scared.

Q Isn't it a fact, Mr. Gilmore, that the two of you decided to rob Ollie Chesson?

MR. LUNARDI: Objection.

THE COURT: Overruled.

THE DEFENDANT: No.

BY MR. KING:

Q Mr. Gilmore, why did you tell Sergeant Gibbons initially that you were not present when Michael Needham stabbed Ollie Chesson?

A Because after the incident that had happened, Mike, he would go around and just tell people that me and him killed the guy. And like he had told so many people from around our neighborhood that he put me so far in the incident, you know what I mean, a lot of people that thought in their mind that I had helped kill that guy.

Q Mr. Gilmore, did you hear Sergeant Gibbons testify to a conversation that he overheard between you and your mother?

A Yes.

Q Why did you use the phrase, "We were robbing the man," if in fact you had nothing to do with the robbery of Ollie Chesson?

A Because I knew that I didn't have much time to talk to her, and I was just summing the whole thing up.

Q You understood the use of a knife, didn't you?

A What do you mean?

Q You understood what a knife could be used for, didn't you?

A Yes.

Q And you had observed Michael Needham, by your own testimony, strike Ollie Chesson with this cane, didn't you?

A Yes.

Q Why didn't you tell him you wouldn't give him the knife?

A Because he would have took it anyway.

Q Why didn't you leave when you saw him striking him with the cane?

A It happened too fast that it shocked me.

Q Fifty stab wounds happened fast?

MR. LUNARDI: Objection. The question was about the cane, not the stabbing. Ask that it be stricken.

THE COURT: Sustained.

BY MR. KING:

Q What did Mr. Chesson do after he was stabbed

the first time with the knife that you gave Michael Needham?

A I don't know. I turned my head after that.

Q Because all you wanted to do was rob the man; is that right?

A All I wanted to do was get me a couple of dollars.

Q That's a robbery, Mr. Gilmore.

MR. LUNARDI: Objection.

THE COURT: Sustained.

MR. KING: I have nothing further, your Honor.

MR. LUNARDI: May I redirect, sir?

THE COURT: Yes.

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REDIRECT EXAMINATION

BY MR. LUNARDI:

Q Charles, let's get a couple things straight. You were on the corner drinking with Big Mike and some older guys; is that correct?

A Yes.

Q You left the corner -- as left out of the District Attorney's cross-examination, you left the corner with a girl; is that correct?

A Yes.

Q Did any of those people leave the corner with you?

A No.

Q You walked with a girl?

A Yes.

Q Three or four blocks?

A Yes.

Q Then you turned around and you were headed back?

A I was headed back toward that way.

Q Did you get to the corner where Big Mike and the older guys were before you found Ollie Chesson, or did you find Ollie Chesson and never made it back to the corner?

A I never made it back to the corner.

Q Let's get something else straight; what was it about Big Mike that put you in fear of him?

A He was vicious like the cop said. I was really scared of him. He had a reputation, you know, not to let anything get over on him and having things his way.

MR. LUNARDI: Thank you, sir.

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RECROSS-EXAMINATION

BY MR. KING:

Q In spite of this reputation, Mr. Gilmore,

you hung with Michael Needham, didn't you?

A Not just him as one, no.

Q You drank with Michael Needham, didn't you?

A Not just him as one.

Q And you showed Michael Needham the knife that you had, didn't you?

A Not just him as one.

Q And you were the first person who came up with the idea of looking through the pockets of Ollie Chesson, weren't you?

A Yes, to myself.

MR. LUNARDI: Objection to the way that question is phrased, your Honor. That is a have you stopped beating your wife type of question.

THE COURT: Sustained.

MR. KING: No further questions, your Honor.

MR. LUNARDI: Does your Honor have any questions?

THE COURT: No questions.

MR. LUNARDI: You can step down.

Defense calls William Gilmore.

END OF DOCKET